

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re: : 08-11153 (MG)  
:   
LEXINGTON PRECISION CORPORATION, : One Bowling Green  
: New York, New York  
Debtor. : April 2, 2008  
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TRANSCRIPT OF MOTIONS  
BEFORE THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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Weil, Gotshal & Manges LLP  
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For the Bondholders: PAUL SILVERSTEIN, ESQ.  
Committee Andrews Kurth LLP  
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For Lubin Partners: GERALD C. BENDER, ESQ.  
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New York, New York 10036  
  
For the U.S. Trustee: Office of the United States Trustee  
BY: TRACY HOPE DAVIS, ESQ.  
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(Appearances continued on next page)

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For Secured Lenders: JOHN TISHLER, ESQ.  
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1 THE COURT: Good morning, counsel.

2 We're here on No. 08-11153, Lexington Precision Corp.

3 Before we begin I want to bring to everyone's  
4 attention a matter that my chambers discovered last night and  
5 advised the debtor's counsel; in reviewing the first day motion  
6 papers, specifically with respect to the debtor-in-possession  
7 financing motion, in reviewing those papers we observed that  
8 O'Melveny & Myers is counsel to the DIP lenders. I am a  
9 retired partner of O'Melveny & Myers and receive retirement  
10 income from the firm. Consequently, I may not hear any matter  
11 in which O'Melveny & Myers appears. That doesn't necessarily  
12 mean that I need to recuse from the entire case but I do need  
13 to have a better understanding of the role that O'Melveny &  
14 Myers has in this matter. As I say, the only place where we  
15 observed this was in the debtor-in-possession motion. So to be  
16 clear, at a minimum I will not hear the DIP and cash collateral  
17 motions. Another Judge is prepared to hear those this morning.

18 The issue for me is whether I need to recuse myself  
19 from the entire case or only from the DIP and cash collateral  
20 motions. As I say, we advised -- one of my clerks advised  
21 Weil, Gotshal of these basic facts last night. No one else who  
22 is here was aware of that.

23 Let me ask -- and this isn't going to be the final  
24 word on it -- but whether any parties-in-interest, debtor or  
25 anyone else, objects to my handling of matters other than the

1 DIP and cash collateral motion? I don't mean to put anybody on  
2 the spot and no offense will be taken by it. So if the case  
3 needs to go back on the wheel, it will go back on the wheel  
4 this morning. I still reserve the right -- after I understand  
5 better what O'Melveny's role is I may decide that I need to  
6 recuse myself anyway but maybe somebody could address what  
7 O'Melveny's role is.

8 MR. BENDER: Good morning, Your Honor. Gerald Bender  
9 of O'Melveny & Myers.

10 THE COURT: We've never met before.

11 MR. BENDER: We've never met before.

12 THE COURT: Mr. Bender came to the firm after I left.

13 MR. BENDER: That's correct, Your Honor. Just last  
14 May.

15 I have been representing Lubin Partners and acting on  
16 behalf of the DIP lenders in connection solely with respect to  
17 the DIP loan that they offered to make and agreed to make on  
18 behalf of the debtors and for the past, I'd say, three or four  
19 weeks we've been engaged in negotiations and discussions with  
20 the debtors and interacting with the pre-petition lenders with  
21 respect to that DIP loan and the cash collateral and how the  
22 two would work together and --

23 THE COURT: Let me ask you, Mr. Bender, in reviewing  
24 -- I think it was probably the 1007 affidavit -- last night I  
25 observed that Mr. Lubin is also one of the owners of subdebt

1 and I don't know whether that's through Lubin LLC or held  
2 differently. He's also a common stockholder. Are you  
3 representing Mr. Lubin or the holder of the subdebt?

4 MR. BENDER: I think that was the general idea but I  
5 haven't discussed that with Mr. Lubin but, honestly, Your  
6 Honor, it's just really been with respect to the DIP loan and I  
7 have not had any actions or interactions with respect to  
8 anything else. So if that's a problem, then the answer is I  
9 won't have to do that.

10 THE COURT: All right. Thank you, Mr. Bender.

11 MR. BENDER: Okay. Thank you.

12 THE COURT: Does someone else want to be heard on  
13 this subject?

14 MR. SILVERSTEIN: Yes, Your Honor. Paul Silverstein  
15 from Andrews, Kurth. I represent the ad hoc bondholders  
16 committee in this case.

17 THE COURT: Yes.

18 MR. SILVERSTEIN: This is about eighteen months old  
19 although it's not been in this Court. It's been --

20 THE COURT: Right.

21 MR. SILVERSTEIN: -- an attempt to simulate what  
22 should have happened outside this Court.

23 I don't really have a position on Your Honor's  
24 comments about the O'Melveny connection but I think Your Honor  
25 needs to be apprised of the facts just so Your Honor can

1 understand what's going on here.

2 THE COURT: Yes.

3 MR. SILVERSTEIN: This is basically from our  
4 perspective an effort by Mr. Lubin, Mr. Delano, by those who  
5 manage this company and own the significant equity stake in  
6 this company to essentially entrench themselves and keep this  
7 company to the detriment of the creditors who obviously want to  
8 be paid. So Messrs. Lubin and Delano occupy a lot of roles  
9 here; not only do they own some subordinated debt, they have  
10 some of the bond debt of which my clients own 75 percent of,  
11 they own 50 odd percent of the equity and so, again, this  
12 doesn't address your comments --

13 THE COURT: Yes.

14 MR. SILVERSTEIN: -- and Your Honor will deal with  
15 that as Your Honor deems appropriate and sees fit and I'm sure  
16 I don't have an objection but the history that's painted in the  
17 pleadings that were submitted in connection with the first day  
18 of the petition are to a large extent fictionalized in terms of  
19 the history so there's another story which we would like at  
20 some point to tell. I know today is not the day to tell the  
21 whole story --

22 THE COURT: Right.

23 MR. SILVERSTEIN: -- but I think we'd like to touch  
24 on some of those points. That's my only comment on that.

25 THE COURT: Okay, Mr. Silverstein, thank you. Anyone

1 else want to be heard on this subject?

2 MS. GOLDSTEIN: Your Honor, Marcia Goldstein of Weil,  
3 Gotshal on behalf of the debtors.

4 We do not object to Your Honor conducting the case.  
5 We understand your issue with respect to the DIP loan and cash  
6 collateral motions. I do take issue for the record that  
7 anything in our pleadings is fictionalized, I just want to be  
8 sure that Your Honor understands that and --

9 THE COURT: I thought you were going to agree but I  
10 mean I'm surprised --

11 MS. GOLDSTEIN: -- we will reserve arguments about -  
12 - this is a one issue case which you'll identify as you proceed  
13 with it. It's about the valuation of the company and the  
14 allocation of the equity and there will be evidence -- not on  
15 the first day, of course.

16 THE COURT: Yes, and I see that from the 1007  
17 affidavit that management believes that there's substantial  
18 equity value so I understand that will be an issue.

19 MS. GOLDSTEIN: Yes. But, Your Honor, I would point  
20 out as you, yourself, identified that Mr. Lubin and Lubin  
21 Partners, in particular, Mr. Delano is not part of the DIP  
22 lenders so I just want to clarify that. But we represent the  
23 company. So Weil, Gotshal will not be representing Mr. Lubin  
24 or Mr. Delano in any individual capacities in this case --

25 THE COURT: Okay.

1 MS. GOLDSTEIN: -- and there may be a time -- it  
2 hasn't happened yet -- where Mr. Bender is asked to represent  
3 Mr. Lubin or Lubin Partners. I can't answer that question and  
4 it would probably not be the case if they would seek multiple  
5 lawyers with their multiple hats. So I just wanted to make  
6 sure that everybody understood our role versus the potential  
7 role of O'Melveny.

8 THE COURT: Okay. Is anyone here from the UST?

9 MS. DAVIS: Good morning, Your Honor, Tracy Hope  
10 Davis, assistant U.S. Trustee to Diana Adams, the U.S. Trustee.  
11 I haven't had the pleasure of appearing before you.

12 THE COURT: Good morning.

13 MS. DAVIS: I have nothing to comment on with respect  
14 to Your Honor's decision as to whether or not you would keep  
15 the case or not. I'll communicate to Your Honor that we have  
16 been in lengthy discussions with debtor's counsel with respect  
17 to this case for, I would say, probably the last two to three  
18 weeks. I will add to that, however, Your Honor, that,  
19 unfortunately, we were not able to get blackline copies with  
20 respect to some -- reflecting some of the concerns that we  
21 raised until just this morning. While counsel did send them to  
22 us last night it was after, unfortunately, our hours that we  
23 keep in our office.

24 THE COURT: Right.

25 MS. DAVIS: So it's possible that some of our



1 communications might slow up your proceedings but what we would  
2 request, Your Honor, respectfully -- and I did confer with  
3 counsel very briefly to advise her -- we may ask that any order  
4 that Your Honor considers today or that your successor if that  
5 should occur considers today, we have an opportunity to review  
6 before they get entered.

7 THE COURT: Okay.

8 MS. DAVIS: Thank you.

9 THE COURT: All right. Ms. Goldstein.

10 MS. GOLDSTEIN: Your Honor, I would just like to make  
11 one correction. Mr. Lubin just advised me that it is not the  
12 case that O'Melveny would be asked to represent Mr. Lubin  
13 individually.

14 THE COURT: In what?

15 MR. GOLDSTEIN: Mr. Lubin individually with respect  
16 to individual holdings.

17 THE COURT: Okay. All right.

18 I'm reserving decision whether to recuse myself  
19 entirely from the case. We'll proceed now with the first day  
20 motions other than the DIP and cash collateral motions. These  
21 are, really, for the most part administrative and so if someone  
22 winds up inheriting the case today, you know, so be it. But  
23 we'll go forward with that.

24 Let me ask, does anybody else want to be heard on  
25 this recusal issue?

1 [No response.]

2 THE COURT: Okay. My chambers will advise you --  
3 we'll see what time we finish. I think we had told Weil,  
4 Gotshal last night -- I have an all-day mediation starting at  
5 ten o'clock so we'll go as far as we can on matters but we're  
6 adjourning, certainly, a few minutes before ten o'clock and  
7 with respect to who will handle the DIP and cash collateral  
8 motions, I need to confer with Chief Judge Bernstein -- if he  
9 is able to confer with me because of the Weil, Gotshal  
10 connection -- about who will handle the DIP and cash collateral  
11 motions and whether just on the recusal issue generally, I  
12 think that he won't be impaired from talking about those  
13 issues, he just can't take the case. So at least one of my  
14 colleagues has already indicated he is available later this  
15 morning to handle the cash collateral and debtor-in-possession  
16 financing motion but, Ms. Goldstein, are you going to speak?

17 MS. GOLDSTEIN: Yes.

18 THE COURT: Go ahead.

19 MS. GOLDSTEIN: Your Honor, first, I know that you  
20 have a full day today on another matter and we appreciate your  
21 making the time early this morning. Let me make some  
22 introductions. My team is here; Victoria Barns [Ph.] at  
23 counsel table, Don Rubick [Ph.] behind her and there's probably  
24 Conraid -- I can't see him but Conraid Sang [Ph.] is also here.

25 Also, from the company, I would like to introduce you

1 to three of their executive officers who are here; Michael  
2 Lubin [Ph.], who is sitting in the second row who is the  
3 chairman of the board of directors and co-chief executive  
4 officer, Warren Delano, right behind me who is the president  
5 and co-CEO and Dennis Welhouse [Ph.], who is the senior vice  
6 president and chief financial officer.

7 I think from the standpoint of, I know, your time  
8 today -- although I guess we opened up a little more time --

9 THE COURT: We did.

10 MS. GOLDSTEIN: -- what I would propose is give a  
11 little bit of background on the company, a very brief summary  
12 of the circumstances of the filing and then proceed with the  
13 first day motions, at least the procedural motions.

14 THE COURT: Okay. Anything that's in the 1007  
15 affidavit I've read carefully so you don't need to repeat  
16 what's in the affidavit.

17 MS. GOLDSTEIN: We won't take a lot of time on those.

18 THE COURT: Okay.

19 MS. GOLDSTEIN: With respect to substantive motions  
20 other than the cash collateral and DIP financing, we do have  
21 three motions that come up under Section 363; a motion to pay  
22 the common carriers, a motion to continue a customer program  
23 and also a motion to pay wages and to continue employee  
24 benefits. I do have some proffers of testimony from Mr.  
25 Welhouse on those. Then we also, Your Honor, had filed -- we

1 also have a cash management motion and we had filed a motion  
2 with respect to investment guidelines. Because the U.S.  
3 Trustee would prefer that that not be considered until the  
4 final hearing, on reflection yesterday we determined that we  
5 would not proceed with the investment guideline motion today  
6 but, instead, ask the Court to defer it to the final hearing  
7 and we've modified our proposed order on that.

8 THE COURT: Okay.

9 MS. GOLDSTEIN: So basically we're asking you for a  
10 hearing date rather than a substantive ruling.

11 THE COURT: All right.

12 MS. GOLDSTEIN: We did file an affidavit from Epic  
13 Systems. We will be asking for approval to retain them but in  
14 the meantime there is an affidavit from them that notice of the  
15 commencement of the case and of this hearing has been faxed to  
16 the largest thirty creditors and we did send copies of the  
17 first day pleadings to the U.S. Trustee, bondholders' counsel,  
18 that's Mr. Silverstein, and John Tishler, who is counsel -- he  
19 is here -- for the pre-petition senior secured lender.

20 With respect to the blacklined pleadings, I will be  
21 in a position to provide the Court with what the changes are.  
22 Most of the blacklining was in the DIP and cash collateral  
23 motion because we were discussing many of those things with the  
24 bank counsel right until yesterday.

25 THE COURT: Right.

1 MS. GOLDSTEIN: So I think, frankly, that with that  
2 being a little later this morning there probably is time to go  
3 through those items with the U.S. Trustee.

4 THE COURT: Okay.

5 MS. GOLDSTEIN: In terms of the background to the  
6 company, we have filed two debtors; Lexington Precision  
7 Corporation and Lexington Rubber Group, Inc. Lexington Rubber  
8 Group, Inc. is a wholly-owned subsidiary of Lexington Precision  
9 Corporation. They have a number of businesses which we'll talk  
10 about but it's two companies. The corporate headquarters is in  
11 New York, New York, there's also an administrative office in  
12 Cleveland, Ohio and manufacturing divisions in Rochester, New  
13 York; Jasper, Georgia; Rockhill, South Carolina; Vienna, Ohio  
14 and North Canton, Ohio. As of the end of February, Lexington  
15 had approximately 665 employees. Lexington manufactures large  
16 volumes of high quality rubber and metal components for use  
17 primarily in automobiles and medical devices. There are two  
18 operating segments not surprisingly called the rubber group and  
19 the metals group. The rubber group comprises the majority of  
20 Lexington's assets; manufacturing high-precision rubber  
21 components for the automotive and medical device industry.  
22 Their products include insulators for ignition systems,  
23 connector seals for wire harnesses and molded rubber products  
24 medical devices. Manufacturing these products at specified  
25 product lines, the rubber group has actually excelled in

1 manufacturing high-tolerance parts that others in their  
2 marketplace have not achieved. The metals group manufactures  
3 high-volume aluminum, brass, steel and stainless steel  
4 components, machines from bars, forgings and cold-headed  
5 blanks, primarily for automotive customers.

6 Now, to put some context to what I just said in terms  
7 of all those parts, we do actually have with us the pieces that  
8 our client manufactures. I'm not making an offer of evidence  
9 of any kind but it could put some context to what this company  
10 does. May we approach?

11 THE COURT: Certainly.

12 [Court examining pieces of equipment.]

13 THE COURT: Okay.

14 MALE VOICE: Well, I don't know if they want to a  
15 speaking objection [sic].

16 THE COURT: You can take them now or later. It's  
17 okay. Sure.

18 MS. GOLDSTEIN: Your Honor, we'll take them back at  
19 the appropriate time but we thought it would put context to  
20 your -- these are technologically advanced components and they  
21 actually occupy a significant market share in their markets and  
22 they sell these rubber and metal components to other  
23 manufacturers, particularly, Tier 1 automotive suppliers which  
24 include General Cable Corp. and Delphi Corp. and also,  
25 increasingly, these are sold in the after market.

1           In terms of the company's capital structure, the  
2 company has secured loans pre-petition from Capital Source  
3 Finance Company, a revolver and term loan in the aggregate  
4 amount of approximately \$21 million. That is secured by a  
5 first priority lien on all of the debtor's personal property  
6 and a second priority lien on the real property. CSC Mortgage  
7 is also a secured lender with term loans in the aggregate  
8 amount of \$15 million, the majority of which is outstanding and  
9 they have a first priority lien on the debtor's real property  
10 and a second priority lien on personal property. So,  
11 essentially, between those two loans all the debtor's property  
12 is encumbered. Unsecured debt is comprised of senior  
13 subordinated notes which were issued by Lexington Precision in  
14 the amount of approximately \$34 million. It's senior  
15 subordinated notes and they're due August 1st or were due  
16 August 1, 2009 with interest payable quarterly and that is one  
17 issue of notes in which Mr. Lubin and Mr. Delano hold  
18 approximately 22 percent. There are junior subordinated notes  
19 in the amount of \$346,000.00 with interest payable quarterly.  
20 Mr. Lubin is the sole holder of those notes.

21           THE COURT: When you say he's the "holder," is it  
22 through Lubin LLC or does he hold it differently?

23           MS. GOLDSTEIN: I believe these are held by Mr. Lubin  
24 individually.

25           THE COURT: I'm sorry?

1 MS. GOLDSTEIN: Individually.

2 THE COURT: Thank you.

3 MS. GOLDSTEIN: The trade debt of Lexington as of the  
4 last count was \$6.8 million. The equity holdings, Your Honor -  
5 - this is a publicly-traded company with over \$5 million shares  
6 of common stock outstanding and 3,300 shares of preferred  
7 stock. Now, although it is a publicly-traded company, it's  
8 traded over the counter and very, very thinly traded with only  
9 .2 percent of the outstanding stock traded during the past six  
10 months. Approximately seventy percent of the common stock is  
11 held by Lexington Precision's officers, directors and  
12 affiliates. As of the year-end, the unaudited consolidated  
13 financial statements reflected assets at book value totaling  
14 approximately \$52.6 million, liabilities totaling approximately  
15 \$88.5 million --

16 THE COURT: What's the status of the audit?

17 MS. GOLDSTEIN: I am not sure, Your Honor, what the  
18 status of the audit is. I can --

19 MR. WELHOUSE: The audit has just been finished and  
20 we're in the process of completing the Form 10(k).

21 MS. GOLDSTEIN: Your Honor, I don't know if you heard  
22 Mr. Welhouse but the audit is being finished and we're in the  
23 process of completing the 10(k).

24 THE COURT: Okay. Who are the auditors?

25 MS. GOLDSTEIN: The auditors?



1 MR. WELHOUSE: Maile & Berquist [Ph.], Pittsburgh.

2 MS. GOLDSTEIN: Now, I mentioned the book value of  
3 the assets, however, I think as Your Honor indicated, you noted  
4 in our papers the debtors believe that indicative letters of  
5 intent that Lexington received in connection with its an  
6 attempt at an out-of-court restructuring would indicate that  
7 the market value of these assets significantly exceeds \$52.6  
8 million book value. Just as an example, one of the facilities  
9 -- the Rockville facility -- has a book value of \$5 million  
10 but, specifically, a purchase offer for that facility gave an  
11 indicative value of \$32 million.

12 So one issue in this case, as you can tell from the  
13 opening remarks of counsel, and perhaps the only issue that  
14 will be disputed down the road is the valuation of this  
15 company. The debtors have a positive EBITDA, which is another  
16 factor that will go into that consideration and in fact the  
17 consolidated revenues and EBITDA from the rubber and metals  
18 group in 2007 were approximately \$88.5 million and \$11.7  
19 million respectively.

20 THE COURT: So what's the annual debt service then?

21 MS. GOLDSTEIN: The annual debt service -- I don't  
22 think I have that number handy. I can get that number for you,  
23 Your Honor, but the annual debt service --

24 THE COURT: Well, I understand you've got great  
25 EBITDA but that's before paying interest so --

1 MS. GOLDSTEIN: We understand. This is a balance  
2 sheet restructuring.

3 THE COURT: Right.

4 MS. GOLDSTEIN: The company today is over-levered.

5 THE COURT: I would be interested in knowing what the  
6 annual debt service has been but, go ahead, Ms. Goldstein.

7 MS. GOLDSTEIN: Okay. We'll get you that figure.

8 As I indicated in terms of the financial  
9 circumstances of the company at least from the debtor's point  
10 of view these are health businesses generating revenue but they  
11 do require a restructuring of the balance sheets; I'm talking  
12 about over-leverage and also interest rates that at some point  
13 were excessive in today's market.

14 In terms of their business, again, they are the  
15 leading manufacturer of insulators for automobile ignition  
16 systems and hold 55 percent of the after market and thirty  
17 percent of the OEM market in that business and the leading  
18 manufacturer of connector seals in North America. As far as  
19 the medical division is concerned, the net sales are \$16  
20 million.

21 Your Honor, the point of all of this is really just  
22 to show what the operations are like. We'll be getting into  
23 this much more detailed later in the case.

24 THE COURT: All right.

25 MS. GOLDSTEIN: Despite this business being a healthy

1 and solid and revenue-generating business they have, indeed,  
2 been impacted by the decline in the U.S. based auto parts  
3 manufacture in the U.S. auto industry and this has had an  
4 effect upon their sales volume. I mentioned that one of their  
5 largest customers, Delphi, is still in Chapter 11. They have  
6 suffered in recent times some liquidity issues. There have  
7 been reductions in orders because of the auto industry  
8 situation, also, start-up costs for Rock Hill's division's  
9 program for surgical devices and, frankly, it's been this  
10 combination of factors impacting the company's liquidity that  
11 led to missed interest payments on the senior subordinated  
12 notes starting in November 2006. That caused cross-defaults to  
13 the secured facilities and until recently the company was able  
14 to engage in negotiations with these parties and have  
15 forbearance agreements with the secured lenders. The cost of  
16 those forbearance agreements, however, has been significant;  
17 over \$2.1 million in fees and expenses to date with respect to  
18 a secured lender forbearance agreement and with respect to the  
19 ad hoc committee of senior subordinated notes which essentially  
20 is comprised of six hedge funds which hold approximately 74  
21 percent of the senior subordinated notes. So when you add that  
22 to the 22 percent that is owned by Mr. Lubin and Mr. Delano the  
23 entire issue is practically accounted for. The exchange with  
24 the bondholders for a forbearance agreement was pushing the  
25 interest rate from twelve to sixteen percent and so accrued and

1 unpaid interest on the bonds today is \$8.8 million.

2           In terms of Lexington's efforts at restructuring and  
3 deleveraging, they've hired W.Y. Campbell [Ph.]. We will be  
4 filing a motion to retain them in this case but pre-petition  
5 they were hired to assist in selling some of the assets. They  
6 solicited numerous offers for various assets including the  
7 latest offer that I've already mentioned which was to purchase  
8 the rubber group's Rock Hill, South Carolina facility for \$32  
9 million. The debtors also went out to seek alternative  
10 financing for the company and they did get a commitment for a  
11 loan that would replace the existing secured facilities. Your  
12 Honor, we think that commitment, although it will have to be  
13 redone, forms the basis for an ability to get exit financing  
14 for this company down the road. However, in late January the  
15 forbearance agreements with both the subordinated noteholders  
16 and with the senior lenders expired. The company sought a  
17 further extension from the ad hoc committee to pursue the Rock  
18 Hill sale but the ad hoc committee's terms were not acceptable  
19 to the company and were not achievable by the company and any  
20 further discussion was not successful.

21           It's the company's view that unlike other automotive  
22 part suppliers currently in bankruptcy, the debtors believe  
23 that their businesses have been less adversely effected by  
24 recent economic conditions because a substantial portion of  
25 their business is derived from after market products that's 55

1 percent and also the high manufacturing standard of their  
2 product makes it difficult for other manufacturers to compete  
3 with them for these specific products.

4           So, here we are, Your Honor. Those are the  
5 circumstances of the filing. Again, this is a case about a  
6 balance sheet restructuring. I think at least this side of the  
7 table -- the debtors and we think it's unfortunate that the  
8 company had to seek Chapter 11 protection but it did become  
9 apparent that we were at a stalemate with our bondholders as to  
10 how to restructure the balance sheet and how to achieve long-  
11 term viability for the company. Continued discussions were not  
12 leading anywhere and the company determined that Chapter 11  
13 provided the best option at this time in terms of having a  
14 resolution of these issues.

15           Again, because the company does not have any  
16 overbearing operational issues, we don't have any major  
17 contracts that we're seeking to reject, for example, no  
18 collective bargaining agreements that we have to deal with. It  
19 is the company's intention to move forward as quickly as it can  
20 to propose a plan and to exit Chapter 11 as expeditiously as  
21 possible.

22           THE COURT: Am I correct that two of the collective  
23 bargaining agreements expire this year?

24           MS. GOLDSTEIN: That is correct, Your Honor, although  
25 we don't anticipate that -- those will be dealt with in the

1 normal course.

2 THE COURT: Okay.

3 MS. GOLDSTEIN: We do not anticipate having to come  
4 to this Court to deal with the collective bargaining  
5 agreements.

6 THE COURT: All right.

7 MS. GOLDSTEIN: As I mentioned, based on  
8 conversations with a prospective lender we believe that we will  
9 be able to achieve exit financing to refinance at least the  
10 pre-petition senior secured facility. The company also  
11 believes that all creditors including the bondholders and  
12 including trade should receive full value for their claims and  
13 that there will be sufficient value for the equity.

14 So on that note of background, I'd like to turn,  
15 first, to the procedural motions.

16 THE COURT: Yes.

17 MS. GOLDSTEIN: I don't know what order you'd like to  
18 go in, Your Honor, but --

19 THE COURT: Mr. Silverstein, you wanted to be heard?

20 MS. GOLDSTEIN: I'm sorry?

21 MR. SILVERSTEIN: If I may, Your Honor, I know again  
22 this is a preliminary first day hearing but if I can have  
23 thirty seconds to sixty seconds to basically comment on Ms.  
24 Goldstein's background because it's not from our prospective  
25 particularly accurate in certain respects.

1 THE COURT: Just go ahead and do it rather than  
2 giving a lead-in as to why you want to do it.

3 MR. SILVERSTEIN: I'm asking permission to do that,  
4 Your Honor.

5 THE COURT: Yes, go ahead.

6 MR. SILVERSTEIN: Thank you.

7 THE COURT: You know, I'm -- go ahead.

8 MR. SILVERSTEIN: Thank you, Your Honor.

9 THE COURT: Nobody's positions are getting locked in  
10 here. These are first day motions.

11 MR. SILVERSTEIN: I'm well aware of that and that's  
12 why --

13 THE COURT: Please, go ahead. Just make your  
14 appearance again for the record.

15 MR. SILVERSTEIN: Paul Silverstein of Andrews, Kurth  
16 for the ad hoc bondholder group.

17 Your Honor, Ms. Goldstein is correct that management  
18 owns the bulk of the equity. Management owns twenty percent of  
19 the bonds that my client owns. Management owns the  
20 subordinated bonds. We view this as essentially -- although  
21 it's a public company it's essentially a closely-held company.

22 The purpose of management's efforts here are  
23 essentially to preserve equity value and ownership for  
24 management because this is fundamentally their candy store,  
25 their business, it's what they do.

1 THE COURT: There's nothing wrong with preserving  
2 equity value, Mr. Silverstein.

3 MR. SILVERSTEIN: Well, there's nothing wrong with  
4 preserving equity value if you can appropriately deal with  
5 creditors and, you know, in terms of the history of this case a  
6 year and a half ago the bonds went into default. My clients  
7 entered into a forbearance agreement with the express  
8 understanding in that forbearance agreement that the intent and  
9 the goal was that my clients would be paid for the sale of the  
10 business or some sort of a refinancing transaction or both.  
11 The contemplation was never that the company would sell a  
12 couple of assets, in particular, a key asset such as medical  
13 and if you look at what the company is essentially attempting  
14 to do here is to essentially to leave the bondholders with a  
15 minority equity position so Mr. Lubin and Mr. Delano and that  
16 crowd can keep control of the company and it's not payments  
17 and, clearly, they're going to have to gerrymander an impaired  
18 accepting [sic] class but that's way ahead of where we are  
19 today.

20 THE COURT: It is.

21 MR. SILVERSTEIN: Way ahead of where we are today and  
22 cram down issues are way premature.

23 But as far as -- Your Honor inquired how much  
24 interest is and interest on the bonds --

25 THE COURT: What's the annual debt service?



1 MR. SILVERSTEIN: That service, I think, on the bonds  
2 is roughly \$6 million a year. Indeed, the \$11 million EBITDA  
3 number that the debtor used in its papers, I believe, doesn't  
4 reflect \$2 million of corporate overhead so the numbers are a  
5 little bit skewed and rather than take more time, my point to  
6 you is that in terms of the dynamic of this eighteen month old  
7 or approximately eighteen month old situation there's another  
8 side of the story that obviously needs to be explained to the  
9 Court.

10 THE COURT: It doesn't effect joint administration  
11 and all these other procedural --

12 MR. SILVERSTEIN: It clearly doesn't effect -- it  
13 effects the DIP which Your Honor is not dealing with but it  
14 does effect joint administration. We have no objection to  
15 joint administration, we have no objection to paying employees,  
16 we have no objection to --

17 THE COURT: Whether it's me or someone else, you'll  
18 have plenty of chance to express your views, Mr. Silverstein.

19 MR. SILVERSTEIN: I'm well aware of that but I did  
20 not want that to be forgotten and --

21 THE COURT: That's fine. Okay. Because I have  
22 limited time, let's move on with the motions. Okay?

23 MR. SILVERSTEIN: Sixty seconds. I kept my word.

24 THE COURT: Well, more or less. Go ahead, Ms.  
25 Goldstein.

1 MS. DAVIS: Your Honor, if I may?

2 THE COURT: Yes. Just make your appearance, Ms.  
3 Hope.

4 MS. DAVIS: Yes. Tracy Hope Davis for the U.S.  
5 Trustee.

6 Your Honor, my points are two-fold. We would like  
7 for the order, as all of the orders, to be all inclusive. They  
8 should provide that the motions are granted to the extent  
9 provided herein. We would appreciate that but at the current  
10 drafts they say the motion is granted and the reason that's  
11 significant is one of the requested reliefs in the joint  
12 administration order is that the debtor be allowed to file  
13 consolidated monthly operating reports. We have no problem  
14 with that. We'll probably confer with the debtor as to the  
15 substance of those reports but we want a breakdown as to  
16 disbursements per debtor. Thank you.

17 THE COURT: Okay.

18 Ms. Goldstein, I assume you have no problem with  
19 respect to the form of the orders that get approved conferring  
20 with the UST.

21 MS. GOLDSTEIN: No.

22 THE COURT: I'll be here all day and anything that  
23 gets approved, if you get the orders to me by the end of the  
24 day they'll get entered today. Okay?

25 MS. GOLDSTEIN: We shouldn't have a problem with

1 showing the U.S. Trustee all the orders and making sure that  
2 she's comfortable.

3 THE COURT: I don't expect so. Okay.

4 MS. GOLDSTEIN: Your Honor, we did ask for the debt  
5 service so we'll give you those figures before proceeding with  
6 the orders or the motions.

7 THE COURT: Okay.

8 MS. GOLDSTEIN: With respect to the bond debt at the  
9 contract interest rate of twelve percent, that would be a \$4.1  
10 million annual debt service.

11 THE COURT: Right.

12 MS. GOLDSTEIN: Sixteen percent is no longer relevant  
13 because that terminated with the forbearance agreement.

14 THE COURT: Right.

15 MS. GOLDSTEIN: As to the bank debt, principal  
16 payments that would be due under the bank agreement are \$3.2  
17 million a year and interest at the non-default contract rate,  
18 \$2.5 million.

19 THE COURT: Okay.

20 MS. GOLDSTEIN: With respect to the procedural orders

21 --

22 THE COURT: Let's deal with joint administration  
23 first.

24 MS. GOLDSTEIN: Joint administration, Your Honor, I  
25 wouldn't think there is anything controversial on that one.

1 THE COURT: It's granted. Okay.

2 MS. GOLDSTEIN: We will show the form of order on all  
3 of these to the U.S. Trustee.

4 THE COURT: Okay.

5 MS. GOLDSTEIN: I don't think it's -- it was in the  
6 letter that we sent you, Your Honor, but we also will ask for  
7 an order scheduling an initial case conference. It is in the  
8 binder that you received and maybe we'd like to talk about the  
9 dates --

10 THE COURT: Yes, we can talk about dates at the end  
11 and we'll talk about dates on the assumption that I still have  
12 the case.

13 MS. GOLDSTEIN: Yes. Another procedural order is a  
14 request to extend the time to file schedules and statements of  
15 financial affairs.

16 THE COURT: You asked for 45 days, I think. The U.S.  
17 Trustee frequently wants to limit that to thirty but do you  
18 have any problem with the 45 days?

19 MS. DAVIS: We do not, Your Honor, and in fact just  
20 for Your Honor's edification and the debtor's counsel's  
21 edification, we anticipate having an organizational leader  
22 [sic] in this case on April 11th and at that time we can maybe,  
23 hopefully, call on the creditors committee with respect to  
24 equity, I think, if that should arise [sic]. We'll communicate  
25 with counsel to get the list [sic].

1 THE COURT: All right. So the request to extend the  
2 time and file schedules is granted for the 45 days that you've  
3 asked for.

4 MS. GOLDSTEIN: Thank you, Your Honor.

5 We've also asked for authority for waiver to file a  
6 list of creditors and for approval of the form and manner of  
7 notifying creditors of the commencement of the case. Instead  
8 of filing a list of all creditors we would prefer to have the  
9 noticing agent service notice of commencement on all creditors  
10 and parties-in-interest.

11 THE COURT: Let's deal with that first. If that's  
12 granted then this isn't going to be a problem. So let's deal  
13 with retaining the noticing agent.

14 MS. GOLDSTEIN: Yes. We propose, Your Honor, to  
15 retain Epic Systems. There are over 800 creditors and parties-  
16 in-interest in this case so, therefore, retaining a noticing  
17 and claims agent is necessary. They will effect service of  
18 motions and other pleadings, maintain the claims registry. At  
19 this time we're not seeking retention of Epic as balloting  
20 agent, that may come later. They are disinterested. They've  
21 filed an affidavit of Daniel --

22 THE COURT: Just remind me which tab number in the  
23 binder is that.

24 MS. GOLDSTEIN: In Tab 11, Your Honor.

25 THE COURT: Thank you.

1 MS. GOLDSTEIN: They have filed an affidavit as to  
2 their disinterest.

3 THE COURT: Any objections on retaining Epic?

4 MS. DAVIS: No, Your Honor.

5 THE COURT: All right. That motion is granted.

6 All right. Now let's come back to the --

7 MS. GOLDSTEIN: Now, let's go back to the list of  
8 creditors.

9 THE COURT: -- list of creditors.

10 MS. GOLDSTEIN: So with the assistance of Epic we  
11 would, instead, propose to have the noticing agent service  
12 notice of commencement on all creditors and parties-in-  
13 interest, publish notice in The Wall Street Journal and all  
14 that would be done as soon as practicable once we know the 341  
15 hearing date from the U.S. Trustee.

16 THE COURT: Any objection to that?

17 MS. DAVIS: No, Your Honor.

18 THE COURT: All right. That motion is granted as  
19 well.

20 MS. DAVIS: We've also asked for notice procedures  
21 motion and we would propose to establish a master service list,  
22 obviously, including the Court.

23 THE COURT: Which tab is this now?

24 MS. GOLDSTEIN: This is Tab 9.

25 THE COURT: Tab 9. Thank you.

1 MS. GOLDSTEIN: Sorry for going out of order.

2 THE COURT: All right.

3 MS. GOLDSTEIN: This would include, obviously, the  
4 Court, the United States Trustee, Weil, Gotshal, counsel for  
5 the ad hoc committee, the proposed DIP lender counsel, any  
6 statutory committee that is appointed and those who request  
7 service. Service would include the top thirty unsecured  
8 creditors until a committee is appointed. We also would  
9 request in that motion that the automatic stay not be  
10 automatically lifted as 362(e) would provide with respect to  
11 motions for stay relief that are adjourned on consent of both  
12 parties beyond the thirty days. Essentially, Your Honor, we're  
13 trying not to come back to the Court if the parties agree to  
14 adjourn those motions.

15 THE COURT: Does anybody wish to be heard on that?  
16 The twist was with respect to the automatic stay. Are there  
17 any objections?

18 MS. DAVIS: No, Your Honor, with the exception that I  
19 don't think there's been a mention with respect to those that  
20 are pre-petition secured. Are they going to be noticed as  
21 well?

22 MS. GOLDSTEIN: Yes, they should be noticed.

23 THE COURT: Are they in the order -- you'll make sure  
24 it's in the order.

25 MS. GOLDSTEIN: I'll make sure they're in the order.

1 THE COURT: Okay. All right. Hearing no objection,  
2 the motion on notice procedures is approved with the provision  
3 regarding the automatic stay.

4 MS. GOLDSTEIN: Thank you, Your Honor.

5 We also have a motion to approve an administrative  
6 expense claim for goods ordered pre-petition but delivered  
7 post-petition. We consider this as a procedural order because,  
8 Your Honor, this is more of a comfort order. We wouldn't  
9 normally ask you for a comfort order on something where we're  
10 satisfied that that would be the law. However, in dealing with  
11 the vendors who supply the debtors with goods --

12 THE COURT: Yes, I understand.

13 MS. GOLDSTEIN: -- it's a lot easier just to hand  
14 them this order.

15 THE COURT: Which tab again? I just need you to walk  
16 me through the --

17 MS. GOLDSTEIN: No. 10.

18 THE COURT: Thank you.

19 MS. GOLDSTEIN: So we have about 800 vendors that  
20 supply the debtors and they have numerous pre-petition orders  
21 that are awaiting delivery. It's about \$2.7 million in that  
22 and in order to insure prompt delivery of those goods we're  
23 seeking a comfort order if you will that grants an  
24 administrative claim for those orders made pre-petition but not  
25 delivered until after the commencement date and that is tab 10?



1 THE COURT: Any objection?

2 MS. DAVIS: Your Honor, we do view it as a comfort  
3 order. We defer to the Court.

4 MR. SILVERSTEIN: Your Honor, I have no objection as  
5 to the question as to whether the folks who are getting paid  
6 are listed on the thirty creditor lists that's [inaudible].  
7 But I clearly have no objection.

8 MS. GOLDSTEIN: Your Honor, I wouldn't be able to  
9 tell you if it's on our list of thirty creditors.

10 THE COURT: Yes.

11 MS. GOLDSTEIN: Some of them may very well be and  
12 they'll fall off if they're fully paid.

13 MS. DAVIS: Yes, Your Honor, and I will just note  
14 that, indeed, one of the parts of the whole process of the  
15 claim committee involves, I think, a question and answer  
16 process where we actually ask those creditors what their claims  
17 are and whether they've changed from whatever their schedule  
18 [inaudible].

19 THE COURT: Okay. That motion will be granted as  
20 well.

21 MS. GOLDSTEIN: All right. Now, Your Honor, we have  
22 three motions: the wage and employee benefit motion, a motion  
23 to continue customer programs and a motion to pay common  
24 carriers that are tabs 16, 17 and 18. I have a proffer that I  
25 would like to offer in support of those motions from Dennis

1 Welhouse.

2 THE COURT: Sure.

3 MS. GOLDSTEIN: And rather than my explaining them  
4 and then doing the proffer, I propose to go right to the  
5 proffer.

6 THE COURT: Okay.

7 MS. GOLDSTEIN: Just one comment before I do that.  
8 On particularly the motion to pay common carriers, we're  
9 seeking interim relief today just to pay common carriers. We  
10 agreed with the U.S. Trustee to put off for the final hearing  
11 other elements of that motion including payments to inventory  
12 processors. An inventory processor is a party to whom  
13 Lexington would ship goods for a final process before it's  
14 ready for delivery to the customer. Those would then be  
15 shipped back to Lexington and then Lexington would ship them to  
16 the customer. We are hoping that we do not experience any  
17 glitches in terms of getting those processors paid. We believe  
18 with the final order, hopefully, that it will be timely enough  
19 not to create a problem but if we do have a problem we'd just  
20 reserve our right to come back for expedited relief. Some of  
21 them may in fact be covered by the comfort order. We're going  
22 to look at that a little closely since the orders may have gone  
23 pre-petition and the delivery may be coming post-petition. So  
24 we may be able to cover that but I'd just like to reserve our  
25 right to come back on that.

1 THE COURT: Okay.

2 MS. GOLDSTEIN: Your Honor, as I mentioned, I'm going  
3 to offer a proffer of Dennis J. Welhouse in support of the wage  
4 motion, the common carrier motion and the customer motion. Mr.  
5 Welhouse is the chief financial officer, senior vice president  
6 and assistant treasurer of Lexington Precision Corporation and  
7 Lexington Rubber Group, Inc. and I will refer to both of them  
8 as Lexington. Mr. Welhouse is present today and pursuant to  
9 Federal Rule of Evidence 103(a)(2), this Court may accept a  
10 proffer in lieu of his testimony.

11 Mr. Welhouse is thoroughly familiar with all material  
12 aspects of Lexington's day-to-day operations, business and  
13 financial affairs. If Mr. Welhouse were called to testify in  
14 support of the wage motion his direct testimony would be as  
15 follows: Mr. Welhouse holds a bachelors of business  
16 administration from the University of Wisconsin, Whitewater,  
17 where he majored in accounting and minored in economics. Mr.  
18 Welhouse is also a certified public accountant. Prior to  
19 joining Lexington, Mr. Welhouse was a controller at Moxness  
20 [Ph.] Products, Inc. from 1974 to 1980 and from 1970 to 1974 he  
21 was employed by a predecessor of Deloitte. Mr. Welhouse was  
22 appointed senior vice president and chief financial officer in  
23 June 2004. In these capacities Mr. Welhouse is responsible for  
24 overseeing all aspects of Lexington's financial operations.  
25 Mr. Welhouse has over 35 years of experience in managing a

1 company's financial operations. Mr. Welhouse would testify  
2 that payment and continuation of employee pre-petition wages  
3 and health and welfare benefits is critical to Lexington's  
4 reorganization. He would testify that in the ordinary course  
5 of Lexington's business it incurs payroll obligations to  
6 employees in the operating division facilities in Rochester,  
7 New York; Jasper, Georgia; Rockhill, South Carolina; Vienna,  
8 Ohio and North Canton, Ohio for the performance of services.  
9 Mr. Welhouse would testify that as of February 29, 2008  
10 Lexington employed 651 individuals of which 134 are salaried  
11 employees, 517 are hourly employees and 22 individuals are on a  
12 temporary basis through a temporary agency. Mr. Welhouse would  
13 testify that Lexington's average monthly gross payroll for all  
14 of their employees is approximately \$2 million and as of the  
15 commencement date there are approximately \$364,000.00 of  
16 accrued and unpaid pre-petition wage and salary obligations.  
17 This amount, frankly, is only the hourly employee obligations.  
18 There is nothing due at this time, Your Honor, in salaried  
19 employee obligations. Their normal course payroll for the  
20 salaried employees was yesterday -- March 31st, not yesterday.  
21 Those amounts are inclusive of the local, state and federal  
22 income taxes owing to the taxing authorities. Mr. Welhouse  
23 would testify that as the amount of these wage and salary  
24 obligations do not exceed the cap of \$10,950.00 per employee,  
25 which is the cap as you know under Section 507(a)(4) of the

1 Bankruptcy Code. So there's nothing due to any employee in  
2 excess of that amount. Mr. Welhouse would testify that  
3 Lexington's obligations to the temporary agency for temporary  
4 employees is approximately \$70,000.00 for the period ending  
5 March 31, 2008.

6 Mr. Welhouse would also testify that in addition to  
7 the local, state and federal income taxes, Lexington is  
8 required to pay matching amounts from its own funds for social  
9 security and Medicare taxes and additional amounts for state  
10 and federal unemployment insurance based on a percentage of  
11 gross payroll. As of the commencement date Lexington owes the  
12 appropriate taxing authorities approximately \$95,000.00 on  
13 account of wages and salaries incurred during the pre-petition  
14 period. With respect to the payroll taxes in particular, Mr.  
15 Welhouse would testify that the portion of those taxes withheld  
16 from an employee's wages on behalf of the applicable taxing  
17 authority are held in trust by Lexington for the benefit of  
18 such taxing authorities.

19 Mr. Welhouse would testify that Lexington has  
20 established various employee benefit plans and policies for its  
21 employees. Such benefit plans and policies can be divided into  
22 the following categories; (1) medical and health insurance,  
23 life insurance, dental insurance and disability benefits, (2)  
24 vacation, personal days, sick time and holiday pay, (3)  
25 flexible spending, (4) 401(k) plans and (5) expense

1 reimbursement. Mr. Welhouse would testify that Lexington  
2 sponsors several health and welfare plans including medical and  
3 dental insurance, short-term and long-term disability  
4 insurance, life insurance and accidental death and  
5 dismemberment insurance. He would estimate that Lexington's  
6 aggregate monthly expenditures under the health and welfare  
7 plans are approximately \$325,000.00. Mr. Welhouse would  
8 testify that because of the manner in which expenses are  
9 incurred and claims processed under such plans it is difficult  
10 for Lexington to determine with certainty the accrued  
11 obligations under the health and welfare plans at any  
12 particular time. Nevertheless, he would testify that Lexington  
13 estimates that as of the commencement date it's accrued, unpaid  
14 obligations to their employees under the health and welfare  
15 plans aggregate approximately \$544,000.00 as of the end of this  
16 March which represents a reserve for unprocessed claims. He  
17 would further testify that the debtor's average accrued but  
18 unpaid monthly obligations of \$544,000.00 divided by the number  
19 of employees -- 651 -- would be approximately \$835.00 per  
20 employee.

21           Your Honor, you're never going to know how much each  
22 employee has so this is the best way to present those figures.

23           Mr. Welhouse would testify that as of the  
24 commencement date the accrued and unpaid vacation, personal  
25 days, sick time and holiday pay is approximately \$890,000.00

1 which would average approximately \$1,360.00 per employee and if  
2 you take all of these amounts together with unpaid wages it is  
3 still less than the \$10,950.00 cap per employee under Section  
4 507(a)(4).

5           With respect to the 401(k) plan Mr. Welhouse would  
6 testify that Lexington withholds from the wages and salary of  
7 participating employees contributions towards a 401(k) plan.  
8 In addition to employee contributions Lexington matches  
9 employee contributions at a rate of fifty percent of the  
10 employee's contribution up to a maximum contribution of three  
11 percent of such employee's annual compensation. Contributions  
12 by Lexington to an employee's 401(k) plan vests at a rate of  
13 twenty percent per year, commencing in the employee's second  
14 year of service and fully vests after six years of service.  
15 Mr. Welhouse would testify that as of the commencement date the  
16 obligations related to the debtor's contribution to pre-  
17 petition 401(k) contributions aggregate approximately  
18 \$13,000.00.

19           Mr. Welhouse would testify that Lexington believes  
20 that most if not all of the pre-petition wage and benefit  
21 obligations as they relate to each employee are in the  
22 aggregate less than the \$10,950.00 cap. Mr. Welhouse would  
23 further testify that Lexington believes that sufficient assets  
24 are available to pay all wage and benefit plans in full under  
25 any plan of reorganization that may ultimately be proposed and

1 confirmed by this Court.

2           Mr. Welhouse would also testify that the debtor's  
3 employees and offers either pay out-of-pocket for business  
4 expenses or use an American Express corporate card to make such  
5 purposes on behalf of the business. These individuals incur  
6 these expenses for the benefit of the debtor's businesses while  
7 traveling and include air fare, hotel, purchasing equipment and  
8 tools and other goods used in conjunction with the services  
9 provided by the employees to the debtors. In some instances  
10 the equipment, tools or other goods may only be purchased by  
11 credit card. Mr. Welhouse would further testify that it was  
12 the debtor's policy to reimburse employees for expenses  
13 incurred for the benefit of the debtors. As of the  
14 commencement date Mr. Welhouse would testify that pre-petition  
15 reimbursement obligations are approximately \$115,135.00. If  
16 debtors did not reimburse the employees for these expenses they  
17 would not only suffer immediate hardship but the debtors would  
18 risk the departure of such employees at a critical stage in  
19 these cases.

20           Mr. Welhouse would also testify that the debtors hold  
21 approximately \$10,600.00 of pre-tax income contributed by  
22 employees participating in the flexible spending program for  
23 the period January 1, 2008 through February 29, 2008 and these  
24 amounts represent property of the employees not the debtors.

25           Mr. Welhouse would testify as well that Lexington



1 hires temporary employees to assist with among other things  
2 clerical and quality control work. The employment of a  
3 temporary agency is cost effective and is essential to the  
4 efficient management and administration of the debtor's  
5 businesses. If the debtors did not honor the pre-petition  
6 obligations to the temporary agencies the debtors risk that  
7 such agencies might cease doing business with the debtors,  
8 thereby, causing significant damage to the debtor's operations  
9 in excess of the small amounts they are owed.

10 Mr. Welhouse would testify that Lexington's  
11 businesses rely heavily on the ability to produce a superior  
12 product by employing skilled individuals whose efficiency  
13 maintains production level at acceptable costs. Mr. Welhouse  
14 would testify that any delay or failure to pay employee wages  
15 and employee benefits would be devastating to the morale,  
16 dedication, confidence and cooperation of these employees;  
17 unplanned or premature attrition during these critical stages  
18 of Lexington's restructuring would be devastating to  
19 Lexington's future prospects and without authorization to pay  
20 wages and benefits Lexington would suffer immediate and  
21 irreparable harm. Mr. Welhouse would testify that absent an  
22 order granting the relief requested by Lexington the employees  
23 will suffer undo hardship and in many instances serious  
24 financial difficulties as the amounts in question are needed to  
25 enable certain of these employees to meet their own personal

1 financial obligations. Without the requested relief the  
2 stability of Lexington would be undermined, perhaps irreparably  
3 by the possibility that otherwise loyal employees would seek  
4 other employment alternatives.

5 Your Honor, that concludes the testimony on behalf of  
6 the wage and benefits motion. I don't know if you prefer to  
7 ask if there are any questions on that or --

8 THE COURT: I do. Let me ask first. Does anybody  
9 wish to cross-examine on the wages and benefits?

10 MS. DAVIS: Your Honor, the U.S. Trustee would.

11 THE COURT: Okay.

12 MS. DAVIS: [Inaudible] unless counsel would like to  
13 supplement her proffer?

14 MS. GOLDSTEIN: Your Honor, I'd be happy to  
15 supplement the proffer if I knew the subject.

16 MS. DAVIS: We recognize the Court's limitations in  
17 time here.

18 THE COURT: Why don't you just go over and confer  
19 with Ms. Goldstein and let her know what your areas -- does  
20 anybody else wish to examine?

21 MR. SILVERSTEIN: No, Your Honor.

22 THE COURT: Why don't you just confer with Ms.  
23 Goldstein so that she understands where your areas of concern  
24 are and perhaps she can supplement the proffer.

25 MS. DAVIS: Yes and I don't want to articulate it to

1 the Court but our areas of concern are primarily the  
2 [inaudible] of Section [inaudible] of the Bankruptcy Code.  
3 They're primarily actually the expenses, Your Honor.

4 THE COURT: Not under the Code, under the Rules.

5 MS. DAVIS: I'm sorry, the Bankruptcy Rules  
6 [inaudible].

7 MS. GOLDSTEIN: Yes. Your Honor, if that went to  
8 whether we are paying --

9 THE COURT: Why don't the two of you just confer  
10 briefly and you may be able to resolve this issue.

11 MS. DAVIS: Okay.

12 MS. GOLDSTEIN: Okay.

13 [Pause in proceedings.]

14 MS. GOLDSTEIN: Your Honor, my colleague, Mr. Lucas,  
15 is checking on a few points but I think the essence of which I  
16 thought I had already proffered what the U.S. Trustee is asking  
17 is how are the employees prejudiced.

18 THE COURT: You're getting some further feedback.

19 [Pause in proceedings.]

20 MS. GOLDSTEIN: I'm sorry, Your Honor.

21 THE COURT: That's all right. Go ahead.

22 MS. GOLDSTEIN: The essential point that the U.S.  
23 Trustee has asked us to supplement our proffer on is how will  
24 the employees be prejudiced if they're not required to wait the  
25 twenty days to a final hearing. Your Honor, as I indicated

1 earlier in the proffer, the salaried employees which generally  
2 would include the officers were paid on March 31st. We're not  
3 asking for any relief with respect to those employees. With  
4 respect to the hourly employees -- these are the people working  
5 in the plants -- we have a payroll coming up this week and then  
6 they're paid again in two weeks. These people rely on their  
7 paychecks every week to pay their own expenses. If we do not  
8 make the payroll this week these employees will be irreparably  
9 injured because they need their money to pay their bills. If  
10 they do not receive their paychecks on time or if a paycheck  
11 bounces that they received in the last payroll but hadn't  
12 cashed or cleared yet they will be irreparably injured and we  
13 believe that this relief is more than justified.

14 We were also asked whether and how the employees were  
15 notified of the filing. The division managers are meeting with  
16 employees today to explain the filing, why it happened and what  
17 it means to them.

18 THE COURT: Is there anything else in your proffer  
19 that you want to add?

20 MS. GOLDSTEIN: Your Honor, I think there is nothing  
21 else. I think in terms of insiders being paid since the  
22 salaried employees are not covered, really, by this order we do  
23 not believe that there are insiders who will be receiving any  
24 wages or salary pursuant to this order. There was one salesman  
25 that the U.S. Trustee asked about whose expenses were over

1 \$11,000.00 and we clarified that as to that salesman that was  
2 not compensation but reimbursement of expenses and I'm hoping  
3 that that covers --

4 MS. DAVIS: Yes, Your Honor. That's satisfactory  
5 with respect to the issues that I have concerning factual  
6 issues I have but I'll [inaudible] to make my judgment.

7 THE COURT: Okay. So you don't wish to cross-  
8 examine?

9 MS. DAVIS: No, I do not, Your Honor.

10 THE COURT: All right. So let's deal with this  
11 motion right now since I don't know whether we're going to get  
12 through everything so does anybody want to be heard on the wage  
13 motion?

14 MS. DAVIS: Thank you, Your Honor. I trust Your  
15 Honor does -- you have the Rule in front of you. I just want  
16 to reiterate that the standard for obtaining relief of this  
17 kind under the Rule is immediate and irreparable harm and, Your  
18 Honor, the U.S. Trustee objects to the motion only to the  
19 extent that the debtors seek to pay expenses to employees in  
20 the amount of \$115,000.00 today, the first day of this  
21 bankruptcy case.

22 Your Honor, if there is a hearing on this motion with  
23 respect to this aspect of the relief that's being sought, the  
24 hearing would be most likely on or before April 21st and we  
25 submit to Your Honor that there is no prejudice shown here for

1 the Court to deny the relief at this time. In fact, the  
2 debtors represent in the motion at Paragraph 38 that the  
3 debtors are billed directly by American Express for the  
4 expenses charged on the corporate cards which they provide to  
5 the employees and the directors and they are personally liable.

6 Your Honor, typically, American Express sends the  
7 bills out on the 20th of the month and those bills are not due  
8 until about the 15th or the 20th of the month and if Your Honor  
9 would adhere to perhaps a hearing scheduled on this motion as  
10 to this aspect of the motion on the 20th or the 21st of the  
11 month there would be no prejudice shown here to the employees.  
12 They would in fact be able to pay these bills.

13 THE COURT: I take it with respect to the hourly wage  
14 earners you're not objecting to the payment of their wages?

15 MS. DAVIS: Not at all, Your Honor.

16 THE COURT: You're talking about this is on expense  
17 reimbursement?

18 MS. DAVIS: Purely expense reimbursement. Indeed, we  
19 think that the debtor has met their showing with respect to the  
20 payment of wages.

21 Okay.

22 THE COURT: Okay.

23 MS. DAVIS: That's really my point, Your Honor.

24 THE COURT: All right. Anybody else wish to be heard  
25 on this?

1 MS. GOLDSTEIN: Your Honor, I would just like to  
2 clarify one point.

3 THE COURT: Go ahead, Ms. Goldstein.

4 MS. GOLDSTEIN: You know, in asking for the  
5 reimbursement of expenses many of these expenses are incurred  
6 on a corporate credit card which the company pays but then the  
7 employees are held liable for and there is an AMEX bill due on  
8 April 9th which is before the final hearing and, you know, if  
9 the employees have to come out of pocket to pay that that could  
10 be burdensome to these employees because the expenses they  
11 incur for the company may well exceed the type of expenses they  
12 would personally incur on their own credit card and it would be  
13 --

14 THE COURT: Just remind me what's the total amount of  
15 the expenses that you're seeking today.

16 MS. GOLDSTEIN: The total amount that we are seeking  
17 is \$115,000.00. The AMEX bill due on April 9th is \$75,000.00.

18 MS. DAVIS: Your Honor, to the extent that this is an  
19 obligation of the debtor to the company itself I would expect  
20 that the cash collateral [inaudible] of this type of  
21 [inaudible] debt would be paid as to the ordinary course  
22 [inaudible] as it would in the ordinary course and the  
23 employees do not have to bear this expense until it's approved  
24 by the Court. So we have a committee that's been appointed to  
25 address some of these issues and raise concerns they may have.

1 We're not talking about [inaudible], Your Honor.

2 THE COURT: So your position is that if the DIP or  
3 cash collateral motion is approved and there's \$75,000.00 due  
4 on AMEX on April 9th that that could be paid?

5 MS. DAVIS: Yes, by the company without prejudice to  
6 the employees.

7 MS. GOLDSTEIN: Your Honor, I think that was the  
8 essence of the relief requested because no matter -- the April  
9 9th payment is a pre-petition debt so we need the Court to  
10 approve us paying that. I'm informed that the secured lender  
11 does not object to cash collateral being used to pay that. One  
12 way or the other we need the Court to approve the payment of  
13 that \$75,000.00 because it relates to a pre-petition period but  
14 the company can pay it.

15 THE COURT: Okay. Subject to the consideration of  
16 the cash collateral and debtor-in-possession motions, the  
17 objection is overruled but the payment is going to be subject  
18 to the approval of the debtor-in-possession and the cash  
19 collateral motions. All right?

20 MS. DAVIS: Thank you, Your Honor.

21 THE COURT: Okay.

22 MS. GOLDSTEIN: And we'll make clear that the order  
23 allows the company to pay it on behalf of the employees.

24 THE COURT: Yes, that's fine. All right. Next. The  
25 common carriers?



1 MS. GOLDSTEIN: I think the next is the common  
2 carriers. Well, actually, I have the next one. The next tab  
3 is the customer programs, Your Honor.

4 THE COURT: Okay. I've got the customer programs.  
5 Go ahead.

6 MS. GOLDSTEIN: With respect to the debtor's motion  
7 for authority to continue their customer programs, Mr. Welhouse  
8 would testify that he has reviewed the debtor's motion and is  
9 familiar with its contents. He would testify and describe the  
10 debtor's customer programs as follows: Before the commencement  
11 of the Chapter 11 cases the debtors in the ordinary course of  
12 their businesses maintained a limited customer program which in  
13 effect enabled customers to return parts which did not meet  
14 customer specifications for replacement parts. Under this  
15 program the debtors would ship and the customers would expect  
16 replacement parts within one week or less. Frequently, the  
17 debtors would ship the replacement parts before the returned  
18 parts were received. Mr. Welhouse would testify that timely  
19 delivery of replacement parts is particularly important given  
20 many of the debtor's customers maintain just-in-time supply  
21 policies under which the parts are delivered just before the  
22 parts are needed. Because of the just-in-time policies,  
23 customers' expectations and operations are predicated on the  
24 prompt and timely delivery of parts including replacement  
25 parts. If the debtors cannot continue to meet expectations

1 customers may lose confidence in the debtors and seek  
2 alternative part sources. Given the nature of these  
3 expectations a delay in granting the requested authority could  
4 alienate customers which would adversely effect revenues and  
5 subsequently undermine the debtor's ability to reorganize.

6 Mr. Welhouse would testify that relevant to the  
7 potential harm to the debtor's estate the amounts at issue are  
8 de minimis. As of the commencement date only an estimated  
9 \$20,000.00 worth of returns are being processed. Mr. Welhouse  
10 would testify that given the above, granting authority to  
11 continue the debtor's return program is in the best interest of  
12 the debtors and all parties.

13 That concludes the testimony.

14 THE COURT: All right. Does anybody wish to cross-  
15 examine on this subject?

16 [No response.]

17 THE COURT: Anybody have objections to this motion?

18 MS. DAVIS: Your Honor, the U.S. Trustee objects to  
19 the motion that's being requested at this time again, Your  
20 Honor, pursuant to Bankruptcy Rule 6003. We think the debtor  
21 has to make an appropriate showing of immediate and irreparable  
22 harm.

23 This goes to in the opening remarks commenting on the  
24 fact that these debtors are leaders in this particular  
25 industry, that the customers here basically cannot obtain these

1 parts from any other type of manufacturer or supplier and we  
2 submit, Your Honor, since this is the only game in town where  
3 they would not go anywhere if they [inaudible] twenty days for  
4 this motion to be approved.

5 We think that a creditors committee, should one be  
6 appointed, have an opportunity to visit these programs and  
7 [inaudible].

8 THE COURT: Okay. Ms. Goldstein.

9 MS. GOLDSTEIN: Your Honor, we're asking the Court to  
10 balance here a de minimis cost against the need to service  
11 customers on a timely basis. That is what this business is  
12 about and the reason they're leaders is because they're capable  
13 of delivering a part when the customer needs it. I think a  
14 disruption in their ability to process replacement parts --

15 THE COURT: Nothing stops them from shipping the  
16 replacement parts. The issue is where credits are going to  
17 wind up being given for returns. Am I wrong about that?

18 MS. GOLDSTEIN: Well, I think that the replacement  
19 part is in effect -- we're not asking authority, I don't  
20 believe, to give credits but, really, to replace --

21 THE COURT: Isn't that effectively what you're doing?

22 MS. GOLDSTEIN: -- it is a credit. Yes.

23 THE COURT: You can ship new parts and the issue is  
24 are they going to get a credit for the replacement or not. Am  
25 I wrong?

1 MS. GOLDSTEIN: Well, Your Honor, I don't think the  
2 customer would appreciate if the new part is then charged again  
3 to them. So effectively it's a set-off and that's why we've  
4 asked for authority and it really is a small amount as compared  
5 to the harm in terms of customer relations.

6 The key to this business is maintaining customer  
7 relations and this is really a small request and compared to  
8 the harm that would inure to the company if they can't continue  
9 this even in the next twenty days --

10 THE COURT: But they continue shipping the parts.  
11 Nobody is stopping them from continuing to ship parts including  
12 parts that are essentially replacement parts for allegedly  
13 defective components that they ship.

14 All it means is waiting until a hearing after twenty  
15 days to sort out the credits for it.

16 MS. GOLDSTEIN: Your Honor, may I just talk with my  
17 client for a minute about how they would normally handle this?

18 THE COURT: Yes, please. Go ahead.

19 They're not going to keep their customers waiting for  
20 parts.

21 [Pause in proceedings.]

22 MS. GOLDSTEIN: Your Honor, as a practical matter  
23 what will happen is we'll keep shipping the parts --

24 THE COURT: Yes, you will.

25 MS. GOLDSTEIN: -- the customer will withhold the

1 portion of what they owe the company --

2 THE COURT: They will and in twenty days you'll work  
3 it out. So the objection is sustained.

4 MS. GOLDSTEIN: I assume in twenty days that will  
5 just be blessed.

6 THE COURT: Well, then that's fine. In twenty days  
7 there will be a committee and the committee can speak and I  
8 assume there won't be any objections and then it will be  
9 blessed.

10 MS. GOLDSTEIN: Right.

11 THE COURT: So the objection is sustained. It just  
12 means a matter of waiting for a final hearing.

13 MS. GOLDSTEIN: Your Honor, is the result that we  
14 would continue to ship parts without an order?

15 THE COURT: I'm not going to tell you about shipping  
16 parts.

17 MS. GOLDSTEIN: All right.

18 THE COURT: That does seem to me to be in the  
19 ordinary course of business.

20 MS. GOLDSTEIN: All right. We will proceed in the  
21 ordinary course.

22 THE COURT: Does the U.S. Trustee disagree about  
23 that?

24 MS. DAVIS: No, Your Honor. Thank you.

25 THE COURT: Okay. All right. Next.

1 MS. GOLDSTEIN: Okay.

2 THE COURT: Common carriers?

3 MS. GOLDSTEIN: Common carriers.

4 Your Honor, I mentioned earlier that in addition to  
5 common carriers at the final hearing we will also --

6 THE COURT: Warehouses.

7 MS. GOLDSTEIN: -- be dealing with inventory  
8 processors and perhaps some other parties but with respect to  
9 common carriers, the debtor's motion covers certain undisputed  
10 pre-petition obligation owing to the common carriers and in  
11 terms of interim relief that's all we're going to be asking for  
12 today.

13 THE COURT: Let me ask, does the UST have an  
14 objection on this motion?

15 MS. DAVIS: Your Honor, our objection is similarly as  
16 laid out before under Bankruptcy Rule 6003.

17 THE COURT: Well, here -- I'm sure Ms. Goldstein  
18 would make a proffer -- but here isn't the problem that a  
19 common carrier simply is going to not deliver?

20 MS. GOLDSTEIN: Correct.

21 THE COURT: Here, there is a real risk that if a  
22 common carrier holds the goods that are in transit and they  
23 don't get delivered, that's a real injury. I mean it's not  
24 like them just deciding to send replacement parts if there's a  
25 problem as in the customer care program. This one, if a

1 railroad decides, until we get paid we're not letting go of the  
2 inventory --

3 MS. DAVIS: Indeed, Your Honor, the -- and thank you  
4 for the clarification.

5 THE COURT: Am I wrong?

6 MS. DAVIS: No, you're correct, Your Honor, but I  
7 would just like to modify just to one extent. We're dealing  
8 here with the interim relief that's being sought.

9 Again, I don't need to reiterate the point that Your  
10 Honor would like the committee to have an opportunity to review  
11 and to revisit some of these issues. If that type of language  
12 can be carved into the existing order just so the committee  
13 would have a right to revisit it, that's all I ask.

14 THE COURT: Let me hear your proffer quickly.

15 MS. GOLDSTEIN: Your Honor, I think our proffer  
16 covers this point. I mean in fact our motion seeks to pay not  
17 just common carriers but --

18 THE COURT: You've got somebody trying to whisper in  
19 your ear.

20 MS. GOLDSTEIN: -- third party processors and  
21 warehouse --

22 THE COURT: Why don't you get your --

23 [Pause in proceedings.]

24 MS. GOLDSTEIN: All of these third parties possess  
25 the debtor's property and hold state law possessory liens and

1 Mr. Welhouse would testify that the debtors have evaluated --  
2 in response to our communications with the U.S. Trustee --  
3 their immediate needs and at this time seek authority only to  
4 pay the common carriers and so that being said that while  
5 payment to the third party processors and warehousemen are  
6 necessary to the debtor's overall reorganization as well the  
7 Court need not hear the balance of the requested relief for  
8 that on the same kind of expedited basis but Mr. Welhouse would  
9 testify and describe the debtor's use of common carriers as  
10 follows: To expedite the shipment of raw materials and other  
11 goods from vendors and delivery of debtor's products to their  
12 customers and distributors, the debtors employ various common  
13 carriers through a third party shipping consultant called  
14 Commercial Traffic, Inc. While the debtors are solely liable  
15 for payment to the common carriers, Commercial Traffic  
16 negotiates shipping rights on the debtor's behalf, audits  
17 invoices and disburses payments to each common carrier.

18           Mr. Welhouse will testify that as of the commencement  
19 date approximately \$350,000.00 in goods is currently in transit  
20 and in the possession of the common carriers and that the  
21 debtors owe Commercial Traffic and the common carriers paid  
22 through Commercial Traffic approximately \$60,000.00. Mr.  
23 Welhouse would testify that the raw materials and supplies in  
24 transit are the means by which the debtors manufacture  
25 products. Without such goods the debtors could not continue to



1 operate and supply their customers. Mr. Welhouse would testify  
2 that as noted in the customer program proffer, customers expect  
3 and demand timely delivery of products and goods under just-in-  
4 time supply policies. A disruption to the debtor's supply  
5 chain will impair the debtor's ability to meet those  
6 expectations which in turn will harm the debtor's overall  
7 reorganization.

8 Mr. Welhouse would testify that given the above  
9 granting the authority to pay the common carriers and  
10 Commercial Traffic in the ordinary course of business is in the  
11 best interest of the debtors and all parties-in-interest.

12 I do believe, Your Honor, our proposed order at Tab  
13 18 has a provision for the creditors committee to revisit any  
14 of this.

15 THE COURT: Okay.

16 MS. DAVIS: Your Honor, with Ms. Goldstein's caveat  
17 with respect to the order of the amounts being paid at this  
18 time limited to common carriers not included in the other two  
19 areas, the U.S. Trustee would have no objection.

20 THE COURT: Thank you. Does anybody else wish to be  
21 heard on it?

22 [Pause in proceedings.]

23 THE COURT: All right. That motion is granted then  
24 with the caveats that have been provided.

25 Okay. What else do we need to do? Quickly.

1 MS. GOLDSTEIN: Your Honor, I think that concludes --

2 THE COURT: So, cash management you're putting off  
3 until the next --

4 MS. GOLDSTEIN: Well, cash -- no, that concludes the  
5 evidentiary.

6 THE COURT: All right. Okay.

7 MS. GOLDSTEIN: We need the cash management frankly -  
8 -

9 THE COURT: I was serious about my time limits.

10 MS. GOLDSTEIN: We do need the cash management  
11 relief, Your Honor.

12 THE COURT: Yes, that's what I thought.

13 MS. GOLDSTEIN: I will quickly describe that. We  
14 don't have a proffer for that and that is critical in fact to  
15 the operation of the cash collateral provisions.

16 THE COURT: Right.

17 MS. GOLDSTEIN: Before the filing the debtors  
18 operated on basically a zero balance system in which each  
19 division maintained a lock box for receivables which were swept  
20 daily into a master lock box account, then available funds in  
21 the master lock box account were swept daily and wired to the  
22 pre-petition secured lenders to pay off the revolver debt.  
23 Each division maintained an individual disbursement account on  
24 which checks to the suppliers would be drawn and on a daily  
25 basis Lexington calculated the funds needed to satisfy payables

1 and their pre-petition secured lenders wired such funds to the  
2 master operating account. Lexington's expenses were debited  
3 from the master operating account even when checks are drawn  
4 from the division's individual disbursement account. The  
5 debtors effectively do not possess much cash in their bank  
6 accounts on a long-term basis in the past and their operations  
7 were funded through a revolving credit facility.

8           What is being proposed post-petition is that the  
9 debtors are no longer being funded through a revolver. Instead  
10 of wiring funds in the master lock box to the pre-petition  
11 lenders the funds will be transferred to the debtor's master  
12 operating account. In addition, the debtors, subject to the  
13 cash collateral and DIP orders would supplement their need for  
14 capital with a proposed \$4 million DIP loan and the proceeds of  
15 that will be deposited into a UST authorized depository.

16           THE COURT: Is First Merit an authorized depository?

17           MS. GOLDSTEIN: First Merit is where they currently  
18 have the operating account. That is not -- and we recognize  
19 that is something we need to work out with the U.S. Trustee.  
20 The new account for the DIP proceeds will be at North Fork  
21 which is an authorized depository.

22           THE COURT: Okay. Let me hear from the UST.

23           MS. DAVIS: A very narrow issue, Your Honor, as to  
24 the debtor's interlineation on their checks that they will  
25 indicate DIP. They don't want to start doing it until seven

1 days after today or yesterday I should say, Your Honor. That's  
2 inappropriate to us, Your Honor [sic]. There should be  
3 transparency with respect to the process, we're not talking  
4 about very much, simply just a stamping [sic], most of these  
5 you want to probably computerize. We just ask that that be  
6 immediately.

7 THE COURT: I agree.

8 Ms. Goldstein, get a stamp and stamp the checks.

9 MS. GOLDSTEIN: Your Honor, in some of the other  
10 cases this condition is waived entirely but if the U.S. Trustee  
11 insists we're going to stamp the checks, I guess we can make  
12 that happen.

13 MS. DAVIS: Yes, and just to add that during my  
14 tenure with the program which is about twelve years, it's never  
15 been waived but I just want to say that that's under the  
16 requirements --

17 MS. GOLDSTEIN: Thank you, Your Honor.

18 THE COURT: Does anybody else want to be heard on  
19 this?

20 [No response.]

21 THE COURT: All right. Change the order, checks will  
22 be stamped.

23 MS. GOLDSTEIN: Okay.

24 THE COURT: Granted.

25 MS. GOLDSTEIN: Okay, Your Honor, we are not going to

1 proceed with the investment guidelines motion as I mentioned.

2 THE COURT: Right.

3 MS. GOLDSTEIN: We'll just get a hearing date set and  
4 I think the only thing left -- unless I've missed something --  
5 is to talk about a hearing date.

6 THE COURT: All right.

7 MS. GOLDSTEIN: We would like to have -- well, I  
8 guess we can't talk about the DIP filing hearing date so we'll  
9 go right to the initial case conference. We are thinking that  
10 the final hearing on wages, what's left of the common carrier  
11 motion, what's left of the customer program motion, the  
12 investment guidelines and also hearings on motions that we are  
13 filing today on twenty day's notice including the utility  
14 retention application for Weil, Gotshal -- let me just tell you  
15 what else -- interim compensation procedures, ordinary course  
16 professional procedures, use tax motion, reclamation claim  
17 procedures, we'd like to get a hearing the week of April 22nd  
18 on all of that.

19 Your Honor, a footnote on the Weil, Gotshal  
20 retention. This is a corporate debtor. They obviously need to  
21 have counsel in this case. We agreed with the U.S. Trustee to  
22 do it on twenty day's notice and not seek interim relief.  
23 We're assuming that that does not prejudice our clients in  
24 using us and we're assuming that that does not prejudice our  
25 ability to get nunc pro tunc relief on that retention.

1 THE COURT: Okay. So here's what we're going to do  
2 if this works for you. Two o'clock, Wednesday, April 23rd. It  
3 doesn't work?

4 MS. GOLDSTEIN: That is the one day in the week that  
5 may present a difficulty.

6 THE COURT: Because your partner, Mr. Perez, is  
7 before in the morning on the PRC --

8 MS. GOLDSTEIN: If I can get Mr. Perez to come before  
9 you at two o'clock -- is there any other possible -- I mean we  
10 will take that date obviously if you have --

11 THE COURT: No, I was trying to simplify my life.

12 This is all subject to whether I'm going to keep the  
13 case or not --

14 MS. GOLDSTEIN: Okay.

15 THE COURT: Thursday, April 24th at 10:00 a.m.

16 MS. GOLDSTEIN: Okay.

17 Thank you, Your Honor.

18 We would like to schedule the initial case conference  
19 as well on that date.

20 THE COURT: Right. I should tell you that I may or  
21 may not -- well, no, I'll have a courtroom. I've been playing  
22 musical courtrooms. My new courtroom is supposed to be  
23 finished by then. If not, we'll have another courtroom. There  
24 won't be a problem with that day.

25 So subject to whether I continue to have the case,

1 10:00 a.m., April 24th and perhaps -- can you have the final  
2 DIP hearing that day too? If it gets approved today you could  
3 --

4 MS. GOLDSTEIN: We were going to ask, assuming the  
5 interim DIP is approved today, for a final DIP hearing earlier  
6 than that, maybe April 16th or 17th?

7 THE COURT: Well, that's not going to be for me so --

8 MS. GOLDSTEIN: So I guess we should deal with the  
9 other Judge --

10 THE COURT: You'll deal with whoever, yes. You may  
11 be dealing with the same Judge for everything. I just don't  
12 know yet.

13 MS. GOLDSTEIN: Okay.

14 THE COURT: I will let you know as soon as possible.

15 Does that conclude with what we need to deal with  
16 today?

17 MS. GOLDSTEIN: I think that concludes what we need  
18 to do. We will make sure the U.S. Trustee is happy with the  
19 orders and get them to your chambers so that they can be  
20 entered today.

21 THE COURT: Okay. Why don't you all sit tight. Let  
22 me see if I can resolve what's going to happen.

23 MS. GOLDSTEIN: That was my next question.

24 THE COURT: We're keeping people waiting upstairs but  
25 I'll do that. Let me must -- we'll be in recess for about five

1 or ten minutes and let me see if I can resolve the issue of  
2 where your fate is going to be.

3 (Recess.)

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I certify that the foregoing is a transcript from an  
electronic sound recording of the proceedings in the above-  
entitled matter.

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CARLA NUTTER

Dated: April 8, 2008